



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 13 2009

REPLY TO THE ATTENTION OF:

(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Glen Shaffer  
Facility Manager  
Keebler Company  
310 28<sup>th</sup> Street S.E.  
Grand Rapids, Michigan 49548

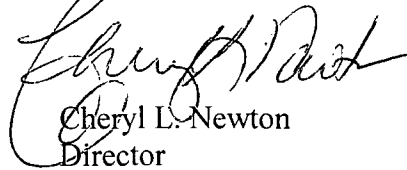
Dear Mr. Shaffer:

This is to advise you that the U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (NOV) to Keebler Company (you or Keebler). We find that Keebler is in violation of the Clean Air Act (the Act), 42 U.S.C. §§ 7401 *et seq.*, at its food manufacturing facility located at 310 28<sup>th</sup> Street S.E., Grand Rapids, Michigan. Specifically Keebler is in violation of the Michigan State Implementation Plan and Title V of the Act.

Section 113 of the Act, 42 U.S.C. § 7413, provides EPA with several enforcement options to resolve these violations, including: issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action. Section 113 of the Act provides Keebler with the opportunity to request a conference with EPA to discuss the violations cited in the enclosed NOV. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The EPA contact in this matter is Jamie Iatropulos. You may call her at (312) 886-6024 if you wish to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton  
Director

Air and Radiation Division

**United States Environmental Protection Agency  
Region 5**

<b>IN THE MATTER OF:</b>	)	<b>NOTICE OF VIOLATION</b>
	)	
<b>The Keebler Company</b>	)	<b>EPA-5-09-MI-13</b>
<b>Battle Creek, Michigan</b>	)	
	)	
Proceedings Under Section 113(a) of	)	
the Clean Air Act, 42 U.S.C.	)	
§ 7413(a).	)	
	)	

**NOTICE OF VIOLATION**

The Keebler Company (you or Keebler) owns a food manufacturing facility located at 310 28<sup>th</sup> Street SE, Grand Rapids, Michigan (the facility). The U.S. Environmental Protection Agency is sending this Notice of Violation (NOV) to you for violating the Clean Air Act (the Act) and its implementing regulations. An explanation of the violations is provided below.

**STATUTORY AND REGULATORY BACKGROUND**

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).
2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such criteria pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate National Ambient Air Quality Standards (NAAQS) requisite to protect the public health and welfare.
3. Under Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified ozone as a criteria pollutant, and has promulgated NAAQS for ozone. 40 C.F.R. §§ 50.9 and 50.10. Volatile Organic Compounds (VOCs) are precursors to the formation of ozone.

FEDERALLY ENFORCEABLE MICHIGAN STATE IMPLEMENTATION PLAN PERMIT  
TO INSTALL AND PERMIT TO OPERATE REQUIREMENTS

4. Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires each state to adopt a state implementation plan (SIP) that contains enforceable emission limitations and such other measures as may be necessary to prevent the deterioration of air quality.
5. On May 6, 1980, EPA approved Michigan Administrative Code (MAC) Rules 336.1201 and 336.1208 as part of the federally enforceable Michigan SIP; the rule became effective on that same date. 45 *Fed. Reg.* 29790.
6. The SIP at MAC Rule 336.1201(1) provides, in relevant part that “[a] person shall not install, construct, reconstruct, relocate, or alter any process, fuel-burning or refuse-burning equipment, or control equipment pertaining thereto, which may be a source of an air contaminant, until a permit is issued . . . . This shall be known as a permit to install . . . .”
7. The SIP at MAC Rule 336.1201(4) provides that, “[a]fter the issuance of the permit to install, trial operation of the equipment is permitted until the [Michigan Department of Environmental Quality] acts upon the permit to operate.”
8. The SIP at MAC Rule 336.1208 requires a person to obtain a permit to operate, and a person may only obtain a permit to operate if the equipment is in compliance with a permit to install and the conditions in the attached permit to install.

REQUIREMENTS OF TITLE V OPERATING PERMIT PROGRAM


9. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that all applicable requirements, such as conditions of permits to install issued under the SIP, are included in the source's Title V operating permit.
10. “Major source” means, among other things, any source that emits or has the potential to emit one hundred tons per year or more of any air pollutant. Section 501(2)(B) of the Act, 42 U.S.C. § 7661(2)(B).
11. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no person may operate a source subject to Title V except in compliance with a Title V operating permit.
12. EPA granted full approval to the Michigan Title V operating permit program, effective November 30, 2001. 66 *Fed. Reg.* 62949.

13. Keebler is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
14. Keebler's facility comprises five food manufacturing lines: Lines 1 and 4 through 7.
15. The Michigan Department of Environmental Quality issued the facility Permit to Install No. 206-08 on September 4, 2008.
16. The Permit to Install does not limit the facility's potential-to-emit because its limits are not practically, and therefore, legally enforceable. Specifically, among other things, the Permit to Install does not specify the flavorings or VOCs for which the facility is allowed to assume an 80 percent retention factor. Further the 80 percent retention factor was based on only one product out of many manufactured at the facility.
17. The facility is a "major source" within the meaning of Section 501(2)(B) of the Act, 42 U.S.C. § 7661(2)(B), because it emits or has the potential to emit greater than 100 tons per year of VOCs.
18. The facility altered Lines 1 and 5 through 7 by undertaking projects C-00028, C-00119, C-00124, C-00268, C-00427, L-00106, CC-0100604000, CC-0101104000, and installed by restarting Line 6 in 2006.

#### **VIOLATIONS**

19. Keebler violated and continues to violate the MAC Rules 336.1201 and 336.1208 by undertaking the projects identified in Paragraph 18 without obtaining permits to install and permits to operate, that contain legally enforceable emission limits for VOCs.
20. Keebler violated and continues to violate Section 502(a) of the Act by operating without a Title V operating permit.

8/12/09  
Date

  
\_\_\_\_\_  
Cheryl L. Newton  
Director  
Air and Radiation Division

## **CERTIFICATE OF MAILING**

I, Tracy Jamison, certify that I sent a Notice of Violation, No. EPA-5-09-MI-13, by Certified Mail, Return Receipt Requested, to:

Mr. Glen Shaffer  
Facility Manager  
Keebler Company  
310 28<sup>th</sup> Street S.E.  
Grand Rapids, Michigan 49548

I also certify that I sent copies of the Notice of Violation by first class mail to:

Heidi Hollenbach, District Supervisor  
Michigan Department of Environmental Quality  
Grand Rapids District Office  
State Office Building, 5<sup>th</sup> Floor  
350 Ottawa Avenue N.W., Unit 10  
Grand Rapids, Michigan 49503-2341

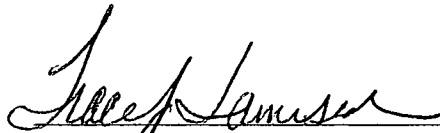
Barbara J. Mantarro, Director of Environmental Quality  
Kellogg Company  
235 Porter Street  
Battle Creek, Michigan 49014

Neil Nyberg, Vice President – Chief Ethics and Compliance Officer  
Kellogg Company  
One Kellogg Square  
Battle Creek, Michigan 49016

John Byl, Esquire  
Warner Norcross & Judd  
900 Fifth Third Center  
111 Lyon Street, N.W.  
Grand Rapids, Michigan 49503

Ryan D. Cobb, Assistant United States Attorney  
United States Attorney's Office  
330 Ionia Avenue N.W. Suite #501  
Grand Rapids, Michigan 49503

on the 13 day of August, 2009.

  
Tracy Jamison  
Office Automation Assistant  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0000 01875976